IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 45 of 1998

with

SPECIAL CIVIL APPLICATION No 1931 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL NATWARBHAI VENIDAS

Versus

STATE OF GUJARAT

Appearance: (In both matters)

MR TUSHAR MEHTA for Petitioners

MR AD OZA for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/05/2000

ORAL JUDGEMENT

1. As in both these matters, challenge has been made to the same order of the respondent- State of Gujarat, the same are being taken up for hearing together and are

being disposed of by this common order.

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2. The petitioner, in all six, are the residents of the village Ranasan. This village is near to Vijapur taluka of Dist. Mahesana. It is at a distance of 2 kms. from Vijapur whereas its distance from Mansa is about 22 kms.. The petitioner No.1 is ex-Sarpanch of Ranasan village Panchayat. He is an elected Director of Vijapur Taluka Sahkari Kharid Vechan Sangh, as well as Member of Vijapur Agricultural Produce Market Committee. He also is a Vice Chairman of Mahesana District Khadi Gram Udyog Sahkari Sangh Ltd.. The petitioners No. 1, 3, 5 and 6 are duly elected members of the Ranasan Gram Panchayat. The petitioner No.4 was a member of Ranasan Gram Panchayat and is also an active worker amongst the people. The State of Gujarat decided to make a separate Taluka of Mansa bifurcating Vijapur Taluka. This has been done by the notification dated 15-10-1997. In the Mansa Taluka, 48 villages were included which were earlier part of the Vijapur Taluka. It is the say of the petitioners that village Ranasan which is adjacent to Vijapur because of its geographical proximity, it was not included in the newly formed Mansa Taluka. It is stated that because of political interference of Vipulbhai Chaudhari, a Cabinet Minister of the State, an attempt has been made to include this village in Mansa Taluka. This has been done vide notification dated 31st December, 1997. The petitioners have come up with the case that at the time of taking the first decision i.e. notification dated 15th October, 1997, the respondent had sought for the opinion of the Gram Panchayat, and after ascertaining the will of the majority of the residents, it conveyed to the respondent that the village wants to be in Vijapur Taluka considering the geographical vicinity and other relevant factors. It is the grievance of the petitioners that if any change has to be made in decision made earlier on 15-10-1997, it was incumbent upon the respondents to follow the same procedure and should have invited the objections and suggestions from the residents who were going to be directly affected by change in the decision. It is submitted that to change earlier decision, the respondents have not followed any procedure.

3. This petition had come up for preliminary hearing in the court on 6-1-1998 on which date, notice was issued to the respondents and interim relief in terms of para-10(B) was granted. Though more than two years have passed from the date of issuance of notice, none of the

respondents has bothered to file reply to the special civil application. The matter has been admitted by the court on 2-3-1998. So, the averments made by the petitioners in the special civil application stand uncontroverted. The petitioners filed a draft amendment in which reference has been made that that decision of 30-12-1997 is contrary to the order of the Election Commission of India dated 18-12-1997. This amendment has been granted.

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4. This petition has been filed by the Gram Panchayat, Kanbha and eight other persons. The petitioners No.2 and 3 are the Sarpanch and Up-Sarpanch respectively of the said Gram Panchayat whereas the petitioners No. 4 to 9 are the members of the Gram Panchayat. They have challenged the notification dated 31-12-1997 under which this village Kanbha has been included in Mansa Taluka. There also, the facts have been given out that this village is at a distance of 4 kms. from Vijapur whereas Mansa is about 22 kms. So from the geographical proximity as well as for convenience of the resident of the village, the petitioners are contending that this inclusion of this village in Mansa Taluka is wholly, arbitrary and unjustified. They have also contended that this has been done at the instance of Hon'ble Minister Vipulbhai Chaudhari. In the notification dated 15-10-1997, this village has not been included in Mansa Taluka. On 29-3-1997, the Gram Panchayat resolved to be with Vijapur Taluka and not with Mansa Taluka. The Gram Sabha also on 12-10-1998 resolved to be with Vijapur Taluka and not with Mansa. This decision in the say of the petitioner, to include this village in Mansa Gram Panchayat was taken without giving opportunity of hearing to the petitioners. It is as per their say against the wish of the residents of the village as well as the members of the Gram Panchayat.

5. In this case also, the respondents have not cared to file reply to the special civil application though notice was given to them on 16th March, 1998. So, the averments made in the special civil application stand uncontroverted. It is really shocking that in such serious matters, the State of Gujarat and its officers have not cared to file reply to the special civil application. This attitude of the officers of the respondent- State of Gujarat is certainly not befitting to their position. Because of this noncooperative attitude of the officers of the State of Gujarat, the

court is not in a position to decide the matters expeditiously. Not only this, it results in multiplicity of proceedings as well as heavy pendency of the matters.

6. Here, reference has to be made to civil application No.1215 of 2000. This application has been filed by the applicants therein,, namely, Gulabji Nathuji Rathod and Gandalal Madhavdas Patel. They prayed for their impleadment as respondents in the special civil application No.45 of 1998. From the reading of the contents of the civil application it is clear that they are the persons who are desirous of inclusion of village Ranasan in newly formed Mansa Taluka. This civil application was ordered to be heard with the main matter.

7. Under the notification dated 15th October, 1997, Mansa Taluka was constituted on bifurcation of Vijapur Taluka and these two villages in question were included in Vijapur Taluka. Under the notification impugned in these special civil application, these two villages were taken out from Vijapur Taluka and now are included in Mansa Taluka. In which Taluka, a particular village has to be kept is a matter which is to be decided only after giving adequate, appropriate and proper opportunity of hearing to the persons concerned, namely, the villagers and the Gam Panchayat. Here, in both the cases, I find that the Gram Panchayats and villagers have unanimously decided to remain in Vijapur Taluka. Geographical proximity as well as wishes of the villagers are very very important and relevant considerations in the matter of taking of decision of inclusion of a particular villages in Taluka concerned. Here, the respondents have by passing the order dated 31st December, 1997 not cared to follow the basic principles of natural justice and fairplay. The Gram Panchayat in one of the cases, is challenging this decision of the Government. When the Gram Panchayat itself is against this decision of the Government, I fail to see how it is justified on the part of the State Government to act contrary to the wish of the said Gram Panchayat. Similarly, the Gram Panchayat is a constitutional authority and at the grass root level it has been created so that the people of the villages have their own Gram Panchayat and their say in the matters. The decision taken by the State Government for including of one village in another Taluka without giving an opportunity of hearing to the Gram Panchayat and villagers is certainly arbitrary and it cannot be allowed to stand.

7. Though allegations of malafide have been raised against Shri Vipul Chaudhary, Hon'ble Minister, but as he

has not been impleaded as a party to this petition, this court cannot go on all these allegations. However, in the facts of this case, though prima-facie, it can be inferred that possibility on some political interference, this decision would have been taken. Once on 15th October, 1997, the Government has taken the decision to continue these villages in Vijapur Taluka and within short period, this decision has been taken, the possibility of some political interference in the same cannot be excluded but for the reasons aforesaid, this matter cannot be finally decided, at this stage, as that concerned Hon'ble Minister is not party to these petitions.

8. In the facts of this case, and more so, when the same are uncontroverted, the interest of justice will be met in case these petitions are disposed of in terms that the interim relief granted in both these matters shall continue till the Secretary to the concerned department of the State of Gujarat decides this matter afresh after hearing the Gram Panchayats concerned as well as after ascertaining the wishes of the villagers, whether these two villages are to be continued in Vijapur Taluka or are to be included in Mansa Taluka. This exercise has to be undertaken and completed within a period of six months from the date of receipt of writ of this order. Liberty is granted to the petitioners for revival of these special civil applications in case of difficulty. Rule in both these matters are made absolute accordingly with no order as to costs.

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